

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JUSTIN THOMAS MORALES, Movant, vs. UNITED STATES OF AMERICA, Respondent.	4:20-CV-04112-KES ORDER GRANTING LEAVE TO PROCEED IN FORMA PAUPERIS ON APPEAL
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Movant, Justin Thomas Morales, moved to vacate, set aside or correct his sentence under 28 U.S.C. § 2255. Dockets 1, 48. After remand following an appeal to the Eighth Circuit, this court denied Morales's § 2255 motion, and judgment was entered in favor of respondent. Dockets 68, 70. This court issued a certificate of appealability. Docket 68 at 31. He filed a notice of appeal, Docket 71, and he moves for leave to proceed in forma pauperis on appeal, Docket 72.

The Eighth Circuit historically has looked to district courts to rule on in forma pauperis motions for appeal and has held that the filing-fee provisions of the PLRA do not apply to habeas corpus actions. *Malave v. Hedrick*, 271 F.3d 1139, 1140 (8th Cir. 2001) (per curiam). To determine whether a habeas petitioner qualifies for in forma pauperis status, the court need only assess (1) whether the petitioner can afford to pay the full filing fee, and (2) whether the petitioner's appeal is taken in "good faith." 28 U.S.C. § 1915(a)(1), (3). Federal Rule of Appellate Procedure 24(a)(3) also provides that "[a] party who

was permitted to proceed in forma pauperis in the district-court action, or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal without further authorization" unless the district court certifies that the appeal is not taken in good faith. Fed. R. App. P. 24(a)(3).

Morales's appeal appears to be taken in good faith. In his underlying criminal proceeding, *United States v. Morales*, 4:16-CR-40124-KES (D.S.D.), Morales was determined to be financially unable to obtain an adequate defense. Morales previously moved for leave to proceed in forma pauperis on appeal in his motion to vacate, set aside or correct his sentence, which this court granted. Docket 34. His current application also demonstrates his inability to pay the \$605.00 appellate filing fee. See Docket 72. Thus, Morales is granted leave to proceed in forma pauperis on appeal.

It is ORDERED that Morales's motion for leave to proceed in forma pauperis on appeal, Docket 72, is granted.

DATED February 21, 2025.

BY THE COURT:

/s/ Karen E. Schreier

KAREN E. SCHREIER
UNITED STATES DISTRICT JUDGE